

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson**

Plaintiff,

v.

**North 5th Street Investment  
Group, LLC**, a California Limited  
Liability Company

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of North 5th Street Investment Group, LLC, a California Limited Liability Company; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant North 5th Street Investment Group, LLC owned the real property located at or about 1245 N 5<sup>th</sup> St, San Jose, California, upon which the business "Kliman Sales" operates, in September 2020.

1       3. Defendant North 5th Street Investment Group, LLC owns the real  
2 property located at or about 1245 N 5<sup>th</sup> St, San Jose, California, upon which  
3 the business “Kliman Sales” operates, currently.

4       4. Plaintiff does not know the true names of Defendants, their business  
5 capacities, their ownership connection to the property and business, or their  
6 relative responsibilities in causing the access violations herein complained of,  
7 and alleges a joint venture and common enterprise by all such Defendants.  
8 Plaintiff is informed and believes that each of the Defendants herein is  
9 responsible in some capacity for the events herein alleged, or is a necessary  
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
11 the true names, capacities, connections, and responsibilities of the Defendants  
12 are ascertained.

13  
14       **JURISDICTION & VENUE:**

15       5. The Court has subject matter jurisdiction over the action pursuant to 28  
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18       6. Pursuant to supplemental jurisdiction, an attendant and related cause  
19 of action, arising from the same nucleus of operative facts and arising out of  
20 the same transactions, is also brought under California’s Unruh Civil Rights  
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22       7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
23 founded on the fact that the real property which is the subject of this action is  
24 located in this district and that Plaintiff's cause of action arose in this district.

25  
26       **FACTUAL ALLEGATIONS:**

27       8. Plaintiff went to Kliman Sales in September 2020 with the intention to  
28 avail himself of its goods or services motivated in part to determine if the

1 defendants comply with the disability access laws.

2 9. Kliman Sales is a facility open to the public, a place of public  
3 accommodation, and a business establishment.

4 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
5 to provide wheelchair accessible parking in conformance with the ADA  
6 Standards as it relates to wheelchair users like the plaintiff.

7 11. Kliman Sales provides parking to its customers but fails to provide  
8 wheelchair accessible parking.

9 12. The problem that plaintiff encountered is that there was no accessible  
10 parking for wheelchair users. On information and belief, plaintiff alleges that  
11 there used to be a compliant parking space marked and reserved for persons  
12 with disabilities. Unfortunately, it has been allowed to fade. There was no "NO  
13 PARKING" warning and the striping on the access aisle has faded.  
14 Additionally, there was a garbage dumpster stored in a faded parking space.

15 13. Plaintiff believes that there are other features of the parking that likely  
16 fail to comply with the ADA Standards and seeks to have fully compliant  
17 parking available for wheelchair users.

18 14. On information and belief the defendants currently fail to provide  
19 wheelchair accessible parking.

20 15. These barriers relate to and impact the plaintiff's disability. Plaintiff  
21 personally encountered these barriers.

22 16. As a wheelchair user, the plaintiff benefits from and is entitled to use  
23 wheelchair accessible facilities. By failing to provide accessible facilities, the  
24 defendants denied the plaintiff full and equal access.

25 17. The failure to provide accessible facilities created difficulty and  
26 discomfort for the Plaintiff.

27 18. The defendants have failed to maintain in working and useable  
28 conditions those features required to provide ready access to persons with

1 disabilities.

2 19. The barriers identified above are easily removed without much  
3 difficulty or expense. They are the types of barriers identified by the  
4 Department of Justice as presumably readily achievable to remove and, in fact,  
5 these barriers are readily achievable to remove. Moreover, there are numerous  
6 alternative accommodations that could be made to provide a greater level of  
7 access if complete removal were not achievable.

8 20. Plaintiff will return to Kliman Sales to avail himself of its goods or  
9 services and to determine compliance with the disability access laws once it is  
10 represented to him that Kliman Sales and its facilities are accessible. Plaintiff  
11 is currently deterred from doing so because of his knowledge of the existing  
12 barriers and his uncertainty about the existence of yet other barriers on the  
13 site. If the barriers are not removed, the plaintiff will face unlawful and  
14 discriminatory barriers again.

15 21. Given the obvious and blatant nature of the barriers and violations  
16 alleged herein, the plaintiff alleges, on information and belief, that there are  
17 other violations and barriers on the site that relate to his disability. Plaintiff will  
18 amend the complaint, to provide proper notice regarding the scope of this  
19 lawsuit, once he conducts a site inspection. However, please be on notice that  
20 the plaintiff seeks to have all barriers related to his disability remedied. See  
21 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
22 encounters one barrier at a site, he can sue to have all barriers that relate to his  
23 disability removed regardless of whether he personally encountered them).

24  
25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
26 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
27 Defendants.) (42 U.S.C. section 12101, et seq.)

28 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this  
2 complaint.

3 23. Under the ADA, it is an act of discrimination to fail to ensure that the  
4 privileges, advantages, accommodations, facilities, goods and services of any  
5 place of public accommodation is offered on a full and equal basis by anyone  
6 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
7 § 12182(a). Discrimination is defined, inter alia, as follows:

- 8 a. A failure to make reasonable modifications in policies, practices,  
9 or procedures, when such modifications are necessary to afford  
10 goods, services, facilities, privileges, advantages, or  
11 accommodations to individuals with disabilities, unless the  
12 accommodation would work a fundamental alteration of those  
13 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 14 b. A failure to remove architectural barriers where such removal is  
15 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
16 defined by reference to the ADA Standards.
- 17 c. A failure to make alterations in such a manner that, to the  
18 maximum extent feasible, the altered portions of the facility are  
19 readily accessible to and usable by individuals with disabilities,  
20 including individuals who use wheelchairs or to ensure that, to the  
21 maximum extent feasible, the path of travel to the altered area and  
22 the bathrooms, telephones, and drinking fountains serving the  
23 altered area, are readily accessible to and usable by individuals  
24 with disabilities. 42 U.S.C. § 12183(a)(2).

25 24. When a business provides parking for its customers, it must provide  
26 accessible parking.

27 25. Here, accessible parking has not been provided in conformance with the  
28 ADA Standards.

1       26. The Safe Harbor provisions of the 2010 Standards are not applicable  
2 here because the conditions challenged in this lawsuit do not comply with the  
3 1991 Standards.

4       27. A public accommodation must maintain in operable working condition  
5 those features of its facilities and equipment that are required to be readily  
6 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

7       28. Here, the failure to ensure that the accessible facilities were available  
8 and ready to be used by the plaintiff is a violation of the law.

9  
10       **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
11 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
12 Code § 51-53.)

13       29. Plaintiff repleads and incorporates by reference, as if fully set forth  
14 again herein, the allegations contained in all prior paragraphs of this  
15 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
16 that persons with disabilities are entitled to full and equal accommodations,  
17 advantages, facilities, privileges, or services in all business establishment of  
18 every kind whatsoever within the jurisdiction of the State of California. Cal.  
19 Civ. Code § 51(b).

20       30. The Unruh Act provides that a violation of the ADA is a violation of the  
21 Unruh Act. Cal. Civ. Code, § 51(f).

22       31. Defendants’ acts and omissions, as herein alleged, have violated the  
23 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
24 rights to full and equal use of the accommodations, advantages, facilities,  
25 privileges, or services offered.

26       32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
27 discomfort or embarrassment for the plaintiff, the defendants are also each  
28 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-

1 (c.)

2 33. Although the plaintiff encountered frustration and difficulty by facing  
3 discriminatory barriers, even manifesting itself with minor and fleeting  
4 physical symptoms, the plaintiff does not value this very modest physical  
5 personal injury greater than the amount of the statutory damages.

6  
7 **PRAYER:**

8 Wherefore, Plaintiff prays that this Court award damages and provide  
9 relief as follows:

10 1. For injunctive relief, compelling Defendants to comply with the  
11 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
12 plaintiff is not invoking section 55 of the California Civil Code and is not  
13 seeking injunctive relief under the Disabled Persons Act at all.

14 2. Damages under the Unruh Civil Rights Act, which provides for actual  
15 damages and a statutory minimum of \$4,000 for each offense.

16 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
17 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

18  
19 Dated: January 6, 2021

CENTER FOR DISABILITY ACCESS

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23 By: \_\_\_\_\_



24 Amanda Seabock, Esq.  
25 Attorney for plaintiff  
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